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U.S. ATTORNEY
SPOKANE, WA.

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAN 21 1997

JAMES R. LARSEN, CLERK
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)

Plaintiff)

v.)

ROBERT SHERMAN BERRY,)

Defendant)

No. CR-96-259-WFN

ROBERT BERRY'S SECOND RESPONSE
TO REQUEST FOR ALIBI EVIDENCE

Comes now defendant Robert Sherman Berry, by and through his attorney John T. Rodgers, and responds to the government's demand for alibi evidence as follows: The defendant asserts, and has formally advised the government,, that he was not present at the scene of the transgressions outlined in the Indictment. Defendant further asserts that he is unsure whether he will establish this point through:

(1) cross examination of the government's witnesses. If the defendant does so, he will use witnesses the government has already identified and has had ample opportunity to interview

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7 (2) through additional witnesses called by the defense. Other discovery review and
8 investigation have have prevented defendant from developing independent witnesses. Any
9 such individuals on defendant's "short list" are either already known to the government, or
10 possibly subject to a *Jenks* assertion that they do not wish to be interview by the
11 government.

12 (3) By waiving his Fifth Amendment right to silence and taking the stand in his
13 own behalf.. Defendant's counsel is unable to influence this decision, and is unable to
14 waive the defendant's Fifth Amendment right.
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